

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 10, 2008 Session

GLYNDA MILLER v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission

No. T20060244-1 Stephanie R. Reeves, Claims Commissioner

No. M2008-01241-COA-R3-CV - Filed March 30, 2009

A former state employee brought a claim against the State under the Claims Commission Act, Tenn. Code Ann. § 9-8-301 *et seq.*, claiming a state official made actionable remarks about her to the press in relation to a sexual harassment investigation and her subsequent termination. The Claims Commissioner granted the State summary judgment finding, among other grounds, that the public remarks were not defamatory and did not place her in a false light. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission
Affirmed**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Phillip L. Davidson, Nashville, Tennessee, for the appellant, Glynda Miller.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Jay C. Ballard, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

Glynda Miller, a former state employee, filed a claim against the State under the Claims Commission Act, Tenn. Code Ann. § 9-8-307, alleging that statements made to the press by Steve Norris, Deputy Commissioner of the Division of Mental Retardation Services, defamed her and placed her in a false light. Ms. Miller appeals the order by the Claims Commissioner granting summary judgment to the State.

The following facts as found by the Claims Commissioner do not appear to be in dispute. Ms. Miller was hired as a Regional Investigator for the Department of Finance and Administration, Division of Mental Health and Retardation (“Department”) in 1998. In April of 2001, Ms. Miller became the Senior Regional Investigator for the Middle District.

Laura Stickel was hired as a Middle District Regional Investigator in May of 2004 and was thereafter terminated four months later, in September of 2004. After her termination, Ms. Stickel alleged that she had been sexually harassed by another investigator in the middle district, David Gray, and that Ms. Miller, the Senior Regional Investigator, had tolerated a sexually hostile environment.

As a consequence of Ms. Stickel's claims, Deputy Commissioner Norris authorized an investigation¹ to ascertain whether Ms. Stickel's claims were valid. The resulting 26 page Report of Investigation dated October 12, 2004, made the following conclusions:

1. There is a strong probability that the offending behavior as reported by Ms. Stickel did occur. There are statements from other employees to support the allegations and demonstrate a pattern of sexual harassment made by Ms. Stickel against Mr. Gray. Based on the findings, corrective action is warranted and recommended against Mr. Gray.
2. It is the responsibility of supervisors to set the tone and create an atmosphere of zero tolerance with regards to harassment in the workplace. Based on the findings, corrective action is warranted and recommended against Ms. Miller and Ms. Cope.

The details of the allegations and resulting findings are not particularly relevant here except that the Investigation Report found that Ms. Miller acted in a supervisory capacity over both Mr. Gray and Ms. Stickel. Although Ms. Miller denied any culpability or that she was a supervisor of either Ms. Stickel or Mr. Gray, Deputy Commissioner Norris terminated Ms. Miller "for the good of the service" in December of 2004.²

Ms. Stickel's allegations and the Department's response generated interest in the local news outlets. This case filed by Ms. Miller in the Claims Commission against the State under Tenn. Code Ann. § 9-8-307(a)(1)(R)³ concerns statements made to the press by Deputy Commissioner Norris

¹The investigation was conducted by the Department's Executive Administrative Assistant and the Director of Personnel. Numerous people were interviewed during the course of the investigation.

²Mr. Gray was also terminated.

³The Claims Commission Act contains the following waiver of the state's sovereign immunity in Tenn. Code Ann. § 9-8-307(a)(1)(R):

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

...

(continued...)

which allegedly defamed her and placed her in a false light. Specifically, Ms. Miller alleges that the State is liable to Ms. Miller based on a March 15, 2005 WSM-TV broadcast and an article in the *Tennessean*.

The speakers on March 15, 2005 WSM-TV broadcast include two WSM-TV employees, (Ms. Kalodimos and Ms. Amons), Ms. Stickel (who brought the charges), an unidentified speaker, Sheriff Bollinger of the Robertson County Sheriff's Department (who had also hired Mr. Gray), and Deputy Commissioner Norris.

KALODIMOS: Two state employees have been fired after an investigation into sexual harassment in the workplace. One of them, who worked a second job in law enforcement, has not lost his badge. Nancy Amons has our exclusive I-Team Investigation.

AMONS: The Tennessee Division of Mental Retardation has a staff of investigators who look into harm against clients, but now one of the investigators and his boss are out of work. Investigator David Gray sexually harassed his co-workers according to an internal State Investigation. Co-worker Laura Stickel, in particular, it found was subjected to repeated unwanted sexual advances and inappropriate comments by Gray.

STICKEL: And it was just so appalling and sickening to see him harass other people as well as myself.

AMONS: Stickel said she complained to their boss, Glynda Miller, who laughed it off saying, "I know, he's a pig." Another former investigator agrees the sexual comments and actions were blatant and unchecked.

UNIDENTIFIED SPEAKER: He followed her around like a little puppy dog. He was saying things to her, making comments sexual in nature.

AMONS: He recommended Stickel file a complaint. She did.

³(...continued)

(R) Claims for libel and/or slander where a state employee is determined to be acting within the scope of employment;

...

It is not disputed by the State that the State's immunity to Ms. Miller's claims is waived. There may, however, be an issue whether the false light tort is encompassed within the immunity waived for libel and slander in subsection (R). This issue was not raised below. We do not need to address this issue for the first time on appeal since the Claims Commission's dismissal is upheld on other grounds.

STICKEL: And you know, right after I voiced that I was unlawfully terminated.

NORRIS: This issue is she was wrongly terminated for whatever reason.

AMONS: Steve Norris is the Deputy Commissioner over the Department. He ordered an investigation. It concluded Stickel wasn't the one who should have gotten fired; it was Gray and his boss.

NORRIS: Nobody certainly in Ms. Stickel's environment should have to work in that kind of workplace environment. It's not acceptable. This can't - it can't - it can't go on.

AMONS: There's another turn in the story. Gray is, or at least he was, a sergeant in the Robertson County Sheriff's Department. He worked a full-time job on the midnight shift until the sheriff fired him.

BOLLINGER: It was a disgrace to this department and a disgrace to the State of Tennessee.

AMONS: How could someone hold down two full-time jobs? Sheriff Bollinger says he didn't know Gray worked a second 40-hour week at the State.

BOLLINGER: We knew he had a second job, but I thought it was a part-time job.

AMONS: Stickel says lots of times at the State job Gray was missing in action.

STICKEL: It was daily almost that, you know, we were wondering where his, you know, whereabouts were.

UNIDENTIFIED SPEAKER: We knew that his case load wasn't any greater than the rest of us as far as regional investigators, and we would ask sometimes, where is David?

AMONS: Gray's time sheets for Robertson County shows that he frequently charged the County overtime for court appearances and other work during the time he would normally be working at his State job.

NORRIS: And so far we haven't picked up any indication that he was double dipping.

AMONS: We were unable to contact Mr. Gray for our story. Laura Stickel meanwhile has a suit pending against the State. She was in the business of protecting clients but says no one protected her.

STICKEL: I felt like I was, you know, violated and that I wasn't treated fairly.

AMONS: Now after the Robertson County Sheriff fired Gray, he asked the POST commission to take away his certification as a peace officer and they did. The State offered Laura Stickel her job back but asked her to drop the EEOC charge. She wouldn't and hasn't gone back to work.

The second news article relied upon by Ms. Miller is the following *Tennessean* article:

The following weeks and months included inappropriate touching and Gray's talk of oral sex, large breasts and erections, Stickel said. He was assigned as her trainer on how to investigate reports of possible abuse or misconduct toward Tennesseans with mental retardation.

After she complained, her state division conducted an investigation and found "a pocket of inappropriate culture. I certainly don't think it's systemwide," said Stephen Norris, a deputy commissioner of finance overseeing the division.

In December, following the investigation, Norris fired Gray and also fired Glynda Miller, who was Gray's and Stickel's boss.

Stickel "had a very, very unfortunate experience working for the state of Tennessee," Norris said. "What we did as an employer is, we violated her trust. We let that circumstance occur. I feel very badly about it. That's the reason we took action as strong as it was. I want the message sent, I'm not going to tolerate that kind of stuff."

Norris said he has implemented training for the managers of his 4,000-employee division statewide. Additionally, when he meets with staff across the state, he said, he makes it clear he wants workers to be treated fairly and appropriately.

The State moved for summary judgment of Ms. Miller's defamation and false light claims on several grounds. On May 9, 2008, the Claims Commissioner granted the State's request for summary judgment in a thorough, lengthy, and well reasoned opinion. The Commissioner found that "[n]one of the statements attributed to Norris, make reference to Ms. Miller" and even if one construes them in the light most favorable to her position, "they simply do not impugn Ms. Miller's reputation or public standing."

As an alternative ground supporting dismissal, the Commissioner went on to find that even if one found the statements to be defamatory or otherwise actionable, Ms. Miller failed to submit proof to defeat summary judgment. Excerpts from Deputy Commissioner Norris's deposition were introduced that established he received information from the Investigation Report and the people who conducted it. The Commissioner found that Ms. Miller was a public official for purposes of bringing an action for defamation and failed to prove by clear and convincing evidence that Deputy

Commissioner Norris made the statements with actual knowledge of their falsity or reckless disregard of the truth.

Ms. Miller appeals, claiming the trial court erred when it found that the telecast and newspaper article at issue contained no actionable or defamatory statements, that Ms. Miller was a public official, and that there was no issue of fact regarding whether Commissioner Norris acted with reckless disregard.

It is important to note the obvious point that this lawsuit is not a challenge to Ms. Miller's termination from State service but whether she is entitled to recover for comments made by Deputy Commissioner Norris in the two excerpted news articles.⁴ Consequently, whether the termination is supportable is a very different question from whether comments about the fact of termination are actionable.

I. STANDARD OF REVIEW

A trial court's decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 307 (Tenn. 2008); *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005). We review the summary judgment decision as a question of law. *Chattanooga-Hamilton County Hosp. Auth. v. Bradley County*, 249 S.W.3d 361, 364 (Tenn. 2008); *Finister v. Humboldt Gen. Hosp., Inc.*, 970 S.W.2d 435, 437 (Tenn.1998). Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co., Inc.*, 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 88 (Tenn. 2000).

The requirements for the grant of summary judgment are that the filings supporting the motion show that there is no genuine issue of material facts and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d at 365; *Blair*, 130 S.W.3d at 764; *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993). In our review, we must consider the evidence presented at the summary judgment stage in the light most favorable to the non-moving party, and we must afford that party all reasonable inferences. *Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d at 307; *Draper*, 181 S.W.3d at 288.

II. ANALYSIS

We find that the trial court was correct that the two news reports contained no defamatory or other actionable statements by Deputy Commissioner Norris regardless of whether Ms. Miller was a public official.

⁴Ms. Miller filed a claim in the circuit court presumably related to her termination that was dismissed in 2005.

A. Defamation

Tennessee has adopted the Restatement (Second) of Torts (1977) regarding defamation of a private person:

§ 580B. Defamation of Private Person. One who publishes a false and defamatory communication concerning a private person, or concerning a public official or public figure in relation to a purely private matter not affecting his conduct, fitness or role in his public capacity, is subject to liability, if, but only if, he

(a) knows that the statement is false and that it defames the other,

(b) acts in reckless disregard of these matters, or

(c) acts negligently in failing to ascertain them.

Press, Inc. v. Verron, 569 S.W.2d 435, 442 (Tenn. 1978).

If a person is a public official, in addition to the basic elements of defamation, one must also prove by clear and convincing evidence that the actionable statement was made with “actual malice,” which requires that the statement was made with knowledge that it was false or with reckless disregard of its accuracy. *Hibdon v. Grabowski*, 195 S.W.3d 48, 58 (Tenn. Ct. App. 2005); *see also Press, Inc.*, 569 S.W.2d at 447.

Even if one accepts Ms. Miller’s argument that she was a private person, her defamation claim nevertheless fails. If one examines the news accounts relied upon by Ms. Miller, it is clear that Deputy Commissioner Norris made no comment about her at all. On appeal, Ms. Miller vehemently denies she was a supervisor and seems to believe that is a lynchpin to her argument. While it may be significant in her termination, it was not significant in a defamation action about comments made by an official in an article about the fact of termination. Again, this lawsuit is not about whether Ms. Miller should have been fired, it is whether she was defamed by Deputy Commissioner Norris. She was not.

Since the news reports contain no defamatory material by Deputy Commissioner Norris about Ms. Miller, the Commission’s finding is affirmed.

B. False Light

The other cause of action alleged by Ms. Miller is the tort of false light which is defined as follows:

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

West v. Medix General Convergence, Inc., 53 S.W.3d 640, 643-44 (Tenn. 2001).

Again, since Deputy Commissioner Norris made no comment about Ms. Miller, it is hard to find that either prong is met to establish false light claim.

Since we affirm the Commissioner's finding that Deputy Commissioner Norris made no remarks that were false or placed Ms. Miller in a false light, the other issues regarding whether Ms. Miller was a public official and thus required to prove reckless disregard by clear and convincing evidence are pretermitted. Costs of the appeal are taxed to Glynda Miller for which execution may issue if necessary.

PATRICIA J. COTTRELL, P.J., M.S.